

Supreme Court, U. S.

FILED

SEP 80 1977

MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1977

77-386

JOHNNIE FLANNIGAN,

Petitioner,

vs.

BENJAMIN F. BAILAR,
Postmaster General
of The United States,
et al.,

Respondents.

Appendices to Petition for Writ of
Certiorari to the United States Court
of Appeals for the Ninth Circuit

HARRIETTE WILLIAMS BATIPPS

and

CECIL L. McGRIFF

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Attorneys for Petitioner

RECEIVED
FEB 24 1976
CLERK, U.S. DISTRICT COURT
SAN FRANCISCO
FILED
FEB 26 1976
WILLIAM L. WHITTAKER, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHNNIE FLANNIGAN,)	
)	
Plaintiff,)	CIVIL NO. C-75-2162-RHS
)	
v.)	<u>JUDGMENT</u>
)	
BENJAMIN F. BAILAR,)	ENTERED IN CIVIL DOCKET
et al.,)	FEB 20 1976
)	
Defendants.)	
)	

In accordance with the Order Granting Summary Judgment on Behalf of Defendants, it is hereby ordered, adjudged and decreed as follows:

1. Judgment is hereby entered in favor of defendants and against the plaintiff;
2. Plaintiff take nothing by his complaint, and that the action be dismissed with prejudice;
3. Each party bear its own costs.

Dated: FEB 26 1976

/s/
UNITED STATES DISTRICT JUDGE

UNITED STATES
CIVIL SERVICE COMMISSION

APPEALS REVIEW BOARD
WASHINGTON, D.C., 20415

DECISION
IN THE MATTER OF

Johnnie Flannigan
U.S. Postal Service
San Francisco, California

(Seal of
United States
Civil Service
Commission)

July 23, 1975

/s/ Herman D. Staimen
Chairman

APPENDIX B

UNITED STATES CIVIL SERVICE COMMISSION
APPEALS REVIEW BOARD
Washington, D. C. 20415

D E C I S I O N

IN THE MATTER OF)
)
) TYPE CASE: REMOVAL
)
Johnnie Flannigan)

BEFORE: Zwirn, Griffiths and Stanislav,
Board Members. By majority vote,
Member Griffiths disagreeing.

INTRODUCTION

Through his attorney the above-named appellant submitted an appeal from the November 22, 1974, decision of the San Francisco Field Office of the Federal Employee Appeals Authority (FEAA) which sustained the action of the U. S. Postal Service in removing him from the position of General Foreman, PE-17, in San Francisco, California, effective July 8, 1974.

STATEMENT OF THE CASE

By letter of June 6, 1974, appellant was informed of a proposal to remove him from the service based on the charge that he "caused mail production records to be falsified and inflated" by reweighing mail which had been previously accounted for and by having a clerk do the same at his direction. The letter stated that he was observed reweighing mail and that when confronted by the Postal Inspection Service, he admitted in an affidavit that he had

done so. By letter of the same date, and based upon the same charge, appellant was notified that he was to be suspended during the period of the advance notice of the proposed removal. Appellant responded both in a writing date June 10, 1974, and orally, through his attorney on June 12, 1974. On June 24, 1974, the agency issued its decision to effect the proposed action, stating that although both the written and oral replies had been considered, the reason stated in the notice of proposed adverse action was fully supported by the evidence and warranted the removal.

That action became effective on July 8, 1974.

The notice of decision informed appellant of his avenues of appeal and he chose to submit an appeal directly to the Civil Service Commission.

FIELD OFFICE DECISION

On Appeal to the San Francisco Field Office a hearing was held at appellant's request on September 11, 1974. Following the hearing, on November 22, 1974, the Field Office issued its decision to affirm the action of the Postal Service. The decision of the Field Office found that the agency had not complied with the mandatory procedural requirements of part 752, subpart B, of the Civil Service regulations in processing the suspension during the notice period but that it had complied with those procedures relative to the removal action. With reference to the merits of the case the Field Office found that the charge is supported by the evidence of record, that removal on the basis of the sustained charge is not arbitrary, capricious, or unreasonable, but was taken for such cause as would promote the efficiency of the service, and that the action of the agency,

except relative to the suspension, should be affirmed on that basis.

REPRESENTATIONS TO THE BOARD

On appeal to the Board appellant raises the following contentions in support of his request for reversal of the Field Office decision: he did not double weigh mail or order anyone else to do so; his acts, which may have appeared to be double weighing, were not, but were perfectly acceptable procedures for correcting errors; his admission to the Postal inspectors was coerced, given under duress, and dictated by the Inspectors; his removal violates the principle of equal protection in that one inspector testified that falsification was widespread and there has been no showing that others have been removed for it; and, the former Postmaster General issued an order not to remove postal managers for such falsifications as have been charged against appellant.

The agency was given the opportunity to respond to appellant's contentions and did so by letter of March 21, 1975.

ANALYSIS AND FINDINGS

No appeal has been taken by the agency from the decision of the Field Office which reversed its action in suspending appellant during the advance notice period of the removal action, so the Board will give no further consideration to that aspect of the case. After a thorough review of the record the Board concurs in the decision of the Field Office that the agency complied with all of the mandatory procedural requirements of part 752, subpart B, of the Civil Service regulations in the proceedings leading to appellant's removal.

Relative to the merits of the removal action, the Field Office recounted much of the testimony received at the hearing in the matter before reaching its determination that the charge was sustained. Based upon the Board's review of the evidence of record, we concur in the Field Office decision and find that it is supported by substantial evidence of record. The affidavit which appellant gave to the Postal Inspectors admits that he has on three occasions double weighed mail, which is the offense on which the agency's action is based. On appeal, he alleges that his statement should not be credited since it was gotten by the coercion of the inspectors. He stated that the inspectors had forced him to stay with them, that they swore at him, told him they had evidence to prove that he had done what he later admitted doing, and threatened him with jail if he did not admit it. The Field Office found that such was not the case, and on the basis of the testimony of the two inspectors who spoke to appellant, the fact that the affidavit refers to a harassing letter of warning which was discussed at the hearing and which tends to support the statement made in the affidavit as to the reason appellant engaged in the falsification, and the fact that the clerk who also spoke to the inspectors on the same night and who testified at the hearing did not indicate any of the excesses in their behavior that appellant did, the Board finds that substantial supports the Field Office decision in this regard.

The fact that, as appellant points out, the "pusher" who is alleged to have reweighed mail at appellant's request stated that he never knowingly did so, is not determinative of that portion of the charge that states that appellant had mail reweighed, since his

affidavit states that he "may" have seen appellant take weight tags off of dollies and tell him to reweigh them, and since it is possible that he may have double weighed a bag or cart without knowing that it had previously been weighed. The fact that when appellant was put under surveillance for a two month period no evidence of double weighing was found is also not determinative, in the Board's opinion, since it is entirely possible for such surveillance to have taken place without gathering any evidence of falsifications, especially in light of the testimony which discussed a method of weighing carts which could not have been caught by the television camera and which appellant allegedly used. The Field Office found the testimony of the person who saw appellant doing some double weighing to be credible and found appellant's allegations of bias on her part to be unsupported. The Board will not disturb these credibility determinations of the person who saw each witness in person without further evidence to indicate that the Field Office was in error. No such evidence has been presented on appeal to the Board, as each issue raised in the appeal (the woman's need for extra time off which appellant disallowed, her dislike for appellant, and the possibility that she may have misunderstood appellant's actions in properly weighing bags that had already been weighed in the wrong operation) was also presented to the Field Office and was an area of testimony received at the hearing.

The Board concurs in the determination of the Field Office that the statistical evidence presented by the agency to support its case is both relevant and strong. The evidence indicates a drop of 30% and 38% in the volumes of output of the operations

appellant supervised after the investigation started and appellant was removed from duty. The figures were compared to figures for the previous fiscal year in order to avoid the differences that seasonal variations might make. There can be no doubt that such substantial drops indicate that some falsification was done, and the fact that appellant was the supervisor of these operations tends to implicate him more than anyone else. While it is possible that the investigation may have had some deterrent effect on others who may also have falsified some figures, without a showing of some external factor which might otherwise account for the coincidence between the drop in production and appellant's removal, the Board finds substantial evidence supports the Field Office determination that the figures support the agency's contention that appellant falsified the record of production.

Based on the sustained charge, appellant contends that, nonetheless, he should not have been removed for his action. This contention is based on his statement that the Postal Inspector stated that such falsifications were rampant at the San Francisco Post Office; that there was no showing that others had been similarly removed; that the Former Postmaster General announced an amnesty for those who had falsified; and that he believes that 30 people in another post office were found to have done the same thing but were not punished. The Board finds no merit to these arguments. First, while the inspector indicated that such falsifications had occurred, he did not state that anyone else who was responsible had been found. The Postal Service has taken similar action to

that taken against appellant in two other cases presently before this Board, so it appears appellant's contention that the agency has imposed unlike penalties for like offenses is not supported. As to the other contentions, the Board notes that the agency has submitted a copy of a telegram from the former Postmaster General which indicates that his newly announced policy meant that "there would not be an effort to go back and try to find people to blame." The telegram states, however, that the policy "did not apply to individual past cases with a clear record already established". Finally, the Board notes that appellant has given no support to his "belief" that 30 other postal managers had not been removed when they were found guilty of falsification. In light of these findings, the Board sees no support for appellant's contention that he was denied equal protection of the laws.

Based upon the above findings, the Board concurs in the Field Office's decision that the charge is sustained and that removal is not so harsh in this case as to be arbitrary, capricious, or unreasonable, but was taken for such cause as will promote the efficiency of the service.

DECISION

Accordingly, the November 22, 1974, decision of the San Francisco Field Office is hereby affirmed. The recommended action of the Field Office, the cancellation of the suspension, must be complied with.

IMPLEMENTATION OF THE BOARD DECISION

Under the Civil Service regulations the Board's recommendation is mandatory and the

administrative officer of the agency shall take the corrective action recommended. The appropriate administrative officer is requested to furnish to the Appeals Review Board a copy of the official notification of personnel action (SF-50 or its equivalent) documenting the accomplishment of the required corrective action within 30 days after receipt of this decision. The agency's report should be addressed to the Appeals Review Board, U. S. Civil Service Commission, Washington, D. C. 20415, Attention: Aompliance Desk.

For the Board:

/s/

Herman D. Staiman
Chairman

Julv 23. 1975

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that three copies of the foregoing Appendices to Petition for Writ of Certiorari was mailed on SEP 28 1977, 1977, to the following:

Solicitor General of the
United States
5614 Department of Justice
Washington, D.C. 20530

Dated: SEP 28 1977, 1977

Cecil L. McGrief
CECIL L. MCGRIFF